IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

FAO.No. 167 of 2006() & CAVEAT O.P.447/06

AGAINST THE ORDER DATED 08/06/2006 IN OS 97/2006 IN IA.817/2006 of ADDL.SUB COURT, THALASSERY

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: APPELLANTS/PETITIONERS/PLAINTIFFS

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1. PUSHPA J. SATA, D/O. PRANJEEVAN KANJI, AGED 70 YEARS, BLOCK NO.5, 1ST FLOOR, MAITERIYA CO-OP. HOUSING SOCIETY-LINKING ROAD, SANTA CRUZ WEST, BOMBAY-400 054.

2. DHANALAKSHMI R. PANDYA, D/O. PRANJEEVAN KANJI, AGED 67 YEARS, RESIDING AT NO.4, ZAVARI NIVAS, RAMACHANDRA LANE, GODBUNDER ROAD, MALAD WEST, BOMBAY-400 064.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: RESPONDENTS D2 & D5

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1. ASHOK HARISHANKAR, S/O. LATE HARISHANKAR, AGE NOT KNOWN, BUILDING NO.TK 1/195, NEAR PORAKANDY SCHOOL, KANNUR AMSOM, KANNUR.

2. KEERTHI HARISHANKAR, S/O. LATE HARISHANKAR, AGED 49 YEARS, BUILDING NO.1/195, NEAR PARAKANDY SCHOOL, KANNUR AMSOM, KANNUR.

BY ADV. SRI. A. MOHAMED MUSTAQUE(CAVEATOR)
SRI.V.RAJAGOPAL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN, JJ.

F.A.O.NO. 167 OF 2006 & Caveat O.P.No.447/06

DATED 12th MARCH, 2007.

J U D G M E N T

Kurian Joseph, J.

The appellants are the petitioners/plaintiffs in I.A.817/06 in O.S.97/2006 on the file of the Additional Sub Court, Thalassery. Suit is one for partition. According to the appellants, they are entitled to 30/84 shares of the plaint schedule property. The interlocutory application was filed praying for an order of temporary injunction restraining the defendants 2 and 5 or their men from demolishing or removing the house in the plaint schedule property and restraining them from alienating, altering or inducting third parties into the possession of the plaint schedule property and also from executing and taking delivery of plaint schedule property pursuant to the final decree passed in I.A.961/2000 in O.S.163/96 on the file of the Munsiff Court, Kannur. The court below, on an elaborate consideration of the contentions taken by the parties, dismissed the application.

2. On admitting the appeal, in I.A.I925/06, an interim order was passed in terms of the prayer initially for two weeks and the same was being extended from time to time.

3. We heard the learned counsel appearing for the appellants and the respondents. One of the contentions taken in the appeal itself is that the lower court has not referred to the merits of the case in passing the impugned order. Having extensively heard learned counsel on both sides, we are of the view that it is in the interests of both the parties and in the interests of justice that the interim order passed by this Court in I.A.1925/06 should continue till the disposal of the suit and the suit itself should be disposed of expeditiously. We have consciously refrained from referring to the vehement contentions taken by the parties lest such consideration and any observation thereon should affect the outcome of the suit. Accordingly, without expressing any opinion as to the merits of the contentions taken by the parties, we set aside the order under appeal, in I.A.817/06 in O.S.97/06 on the file of the Additional Sub Court, Thalassery with a direction to dispose of the suit itself, within a period of six months from the date of production of a copy of this judgment by either party. The interim order referred to above will

continue till such time.

The Appeal is disposed of as above.

I.A.No.1925/2006 : Closed

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

F.A.O.NO.167 OF 2006

J U D G M E N T

DATED 18th JULY, 2006.